their connections.[22] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–59 and should be submitted on or before September 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20334 Filed 8–20–13; 8:45 am]

BILLING CODE 8011–01–P

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70209; File No. SR–NYSEArca–2013–60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF Under NYSE Arca Equities Rule 8.200

August 15, 2013.

I. Introduction

On June 12, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Market Vectors Low Volatility Commodity ETF (''Low Volatility ETF'') and Market Vectors Long/Short Commodity ETF (''Long/Short ETF'' and, together with the Low Volatility ETF, ''Funds'') under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on July 2, 2013.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds pursuant to NYSE Arca Equities Rule 8.200, Commentary .02.[4] Each Fund is a series of the Market Vectors Commodity Trust (''Trust''), a Delaware statutory trust.[5] Van Eck Absolute Return Advisers Corp. is the managing owner of the Funds (''Managing Owner'').[6] The Managing Owner also serves as the commodity pool operator and commodity trading advisor of the Funds. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission (''CFTC'') and is a member of National Futures Association. Wilmington Trust, National Association (''Trustee''), a national bank with its principal place of business in Delaware, is the sole trustee of the Trust. The Bank of New York Mellon will be the custodian, administrator, and transfer agent for the Funds.

Overview of the Funds

The Low Volatility ETF will seek to track changes, whether positive or negative, in the performance of the Morningstar® Long/Flat Commodity Index℠ (''Long/Flat Index'') over time. The Long/Short ETF will seek to track changes, whether positive or negative, in the performance of the Morningstar® Long/Short Commodity Index℠ (''Long/Short Index'' and, together with the Long/Flat Index, ''Indexes'') over time.

Each Fund will seek to achieve its respective investment objective by investing principally in exchange-traded futures contracts on commodities (''Index Commodity Contracts'') comprising the Long/Flat Index and the Long/Short Index, respectively, and U.S. Treasury bills maturing in eight weeks or less to reflect ''flat'' positions and, in certain circumstances (as described below), futures contracts other than Index Commodity Contracts traded on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69862 (June 26, 2013), 78 FR 39810 (''Notice'').

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[5] The Trust filed a pre-effective amendment to its registration statements with respect to the Funds on Form S–1 under the Securities Act of 1933 (''1933 Act'') on December 7, 2012 (File No. 333–179435 for the Low Volatility ETF (''Low Volatility Registration Statement'')) and File No. 333–179432 for the Long/Short ETF (''Long/Short Registration Statement'' and, together with the Low Volatility Registration Statement, ''Registration Statements'').

[6] The Managing Owner is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer and has policies and procedures in place regarding access to information concerning the composition and/or changes to the Funds' portfolio composition.

U.S. or foreign exchanges (''Other Commodity Contracts'').[7] In addition, to a limited extent, the Funds may also invest in swap agreements on Index Commodity Contracts or Other Commodity Contracts cleared through a central clearing house or the clearing house's affiliate (''Cleared Swaps''), forward contracts, exchange-traded cash-settled options (including options on one or more Index Commodity Contracts, Other Commodity Contracts, or indexes that include any Index Commodity Contracts or Other Commodity Contracts), swaps other than Cleared Swaps, and other over-the-counter (''OTC'') transactions that provide economic exposure to the investment returns of the commodities markets, as represented by the Indexes and their constituents (collectively, ''Other Commodity Instruments,'' and, together with Other Commodity Contracts and Cleared Swaps, ''Other Instruments''), as described below. The Funds also may invest in U.S. Treasury bonds, other U.S. Treasury bills, and other U.S. government securities and related securities, money market funds, certificates of deposit, time deposits, and other high credit quality short-term fixed income securities, as described in the Registration Statements (collectively, ''Cash Instruments''). The Cash Instruments used to track flat positions in the Indexes will be U.S. Treasury bills.

Each Fund intends to invest first in Index Commodity Contracts. Thereafter, if a Fund reaches the position limits applicable to one or more Index Commodity Contracts or a ''Futures Exchange'' [8] imposes limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in Cleared Swaps, to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Other Commodity Contracts or in Other Commodity Instruments. By using certain or all of these investments, the Managing Owner will endeavor to cause a Fund's performance to closely track that of the Long/Flat Index or Long/Short Index, respectively, over time. The specific circumstances under which investments in Other Commodity Contracts and Other Commodity Instruments may be used are discussed below.

Consistent with seeking to achieve each Fund's investment objective, if a Fund reaches position limits applicable to one or more Index Commodity Contracts or when a Futures Exchange has imposed limitations on a Fund's ability to maintain or increase its positions in an Index Commodity Contract, the Managing Owner may cause a Fund to first enter into or hold Cleared Swaps and then, if applicable, enter into and hold Other Commodity Contracts or Other Commodity Instruments. For example, certain Cleared Swaps have standardized terms similar, and are priced by reference, to a corresponding Index Commodity Contract or Other Commodity Contract. Additionally, certain Other Commodity Instruments can generally be structured as the parties to the contract desire. Therefore, a Fund might enter into multiple Cleared Swaps and/or certain Other Commodity Instruments intended to exactly replicate the performance of one or more Index Commodity Contracts or Other Commodity Contracts, or a single Other Commodity Instrument designed to replicate the performance of the applicable Index as a whole.[9]

After reaching position limits or when a Futures Exchange has imposed limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract as described above, and after entering into or holding Cleared Swaps, a Fund might also enter into or hold Other Commodity Contracts or Other Commodity Instruments that would (1) facilitate effective trading, consistent with a Fund's long/flat or long/short strategy, as applicable; or (2) be expected to alleviate overall deviation between a Fund's performance and that of the Long/Flat Index or Long/Short Index, as applicable, that may result from certain market and trading inefficiencies or other reasons.

By using certain or all of these investments, the Managing Owner will endeavor to cause a Fund's performance to closely track that of the Long/Flat Index or Long/Short Index, as applicable, over time. Each Fund will invest to the fullest extent possible in Index Commodity Contracts and Other Instruments without being leveraged (*i.e.,* without seeking performance that is a multiple (*e.g.,* 2X or 3X) or inverse multiple of the Fund's respective Index) or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Index Commodity Contracts and Other Commodity Contracts or Other Instruments.[10]

Each of the Indexes is currently composed of long, flat, or short (as applicable) positions in Index Commodity Contracts, each of which is subject to speculative position limits and other position limitations, as applicable, which are imposed by either the CFTC or the rules of the Futures Exchanges on which the Index Commodity Contracts are traded. These position limits prohibit any person from holding a position of more than a specific number of such Index Commodity Contracts.

Futures Exchanges may establish daily price fluctuation limits on futures contracts. The daily price fluctuation

[7] According to the Exchange, the Managing Owner expects that Other Commodity Contracts in which a Fund may invest in the circumstances described below would include futures contracts of different expirations, on different commodities, or traded on different exchanges than Index Commodity Contracts.

[8] The Futures Exchanges are the exchanges on which the Index Commodity Contracts are traded and include the following: the Chicago Mercantile Exchange, Inc. (''CME''), Chicago Board of Trade (''CBOT'', a division of CME), NYMEX (a division of CME), ICE Futures US (''ICE–US''), and ICE Futures Europe (''ICE–UK''). Some of a Fund's futures trading may be conducted on commodity futures exchanges outside the United States. Trading on such exchanges is not regulated by any U.S. governmental agency and may involve certain risks not applicable to trading on U.S. exchanges, including different or diminished investor protections.

[9] Assuming that there is no default by a counterparty to an Other Commodity Instrument, the performance of the Other Commodity Instrument should positively correlate with the performance of the Long/Flat Index or Long/Short Index, as applicable, or the applicable Index Commodity Contract.

[10] The Managing Owner will attempt to minimize these market and credit risks by requiring the Funds to abide by various trading limitations and policies, which will include limiting margin accounts and trading only in liquid markets. The Managing Owner will implement procedures which will include, but will not be limited to: Executing and clearing trades with creditworthy counterparties; limiting the amount of margin or premium required for any Index Commodity Contract or Other Commodity Contract or all Index Commodity Contracts or Other Commodity Contracts combined; and generally limiting transactions to Index Commodity Contracts or Other Commodity Contracts which will be traded in sufficient volume to permit the taking and liquidating of positions. The Funds will enter into Other Commodity Instruments traded OTC (if any) with counterparties selected by the Managing Owner. The Managing Owner will select such Other Commodity Instrument (if any) counterparties giving due consideration to such factors as it deems appropriate, including, without limitation, creditworthiness, familiarity with the applicable Index, and price. Under no circumstances will the Funds enter into an Other Commodity Instrument traded OTC (if any) with any counterparty whose credit rating is lower than investment-grade at the time a contract is entered into. The Funds expect that investments in OTC Other Commodity Instruments (if any) will be made on terms that are standard in the market for such OTC Other Commodity Instruments. In connection with such OTC Other Commodity Instruments, the Funds may post or receive collateral in the form of Cash Instruments, which will be marked to market daily.

limit establishes the maximum amount that the price of futures contracts may vary either up or down from the previous day's settlement price. Once the daily price fluctuation limit has been reached in a particular futures contract, no trades may be made at a price beyond that limit. Futures Exchanges may also establish accountability levels applicable to futures contracts. A Futures Exchange may order a person who holds or controls aggregate positions in excess of specified position accountability levels not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability levels if the Futures Exchange determines that such action is necessary to maintain an orderly market. Position limits, accountability levels, and daily price fluctuation limits set by the Futures Exchanges have the potential to cause tracking error, which could cause changes in the net asset value (''NAV'') per Share to substantially vary from changes in the level of the Index and prevent an investor from being able to effectively use the Fund as a way to indirectly invest in the global commodity markets.

According to the Exchange, although the Managing Owner does not expect the Funds to have a significant exposure to Other Commodity Instruments that trade OTC, the Trust's Declaration of Trust does not limit the amount of funds that the Funds may invest in such Other Commodity Instruments. Therefore, as the amount of funds invested in Other Commodity Instruments that trade OTC increase, the applicable risks described in the Registration Statements increase correspondingly.[11]

The Long/Flat Index

The Long/Flat Index is a rules-based, fully collateralized commodity futures index that employs a momentum rule to determine if exposure to a particular commodity should be maintained with its prescribed weighting (''long position'') or moved to cash (''flat position'').[12] For each Index Commodity Contract represented by the Long/Flat Index, Morningstar®, Inc. (''Morningstar'')[13] calculates a ''linked price''[14] that incorporates both price changes and roll yield.[15] Whether a position will be long or flat is determined, at the time of a monthly repositioning, by comparing the linked price of each Index Commodity Contract to its 12-month moving average. For example, if, at a monthly repositioning, the linked price for an Index Commodity Contract exceeds its 12-month moving average, the Long/Flat Index takes the long position in the subsequent month. Conversely, if the linked price for an Index Commodity Contract is below its 12-month moving average, the Long/Flat Index moves the position to cash, *i.e.,* flat.

To be considered for inclusion in the Long/Flat Index, a commodity future must be listed on a U.S. futures exchange, be denominated in U.S. dollars and rank in the top 95% by total U.S. dollar value of the total open interest pool of all eligible commodities. The weight of each Index Commodity Contract is the product of two factors: magnitude and the direction of the momentum signal *(i.e.*, 1 for long, 0 for flat, or -1 for short). On the annual reconstitution date, the magnitude is the open interest weight of the Index Commodity Contract, calculated on the second Friday of December, using data through the last trading day of November. Individual contract weights are capped at 10%. Between reconstitution dates, the weights vary based on the performance of the individual commodity positions. The Long/Flat Index is reconstituted annually and directions (*i.e.,* whether long or flat) of each Index Commodity Contract are determined monthly *on the second Friday of each month, which is one week prior to the* monthly repositioning. As of February 28, 2013, the sector weightings of the Long/Flat Index were Agriculture (29.44%), Energy (50.37%), Livestock (4.48%), and Metals (15.71%).

The Long/Short Index

The Long/Short Index is a rules-based, fully collateralized commodity futures index that employs a momentum rule to determine if exposure to a particular Index Commodity Contract should be maintained with its prescribed weighting (''long position'') or moved to a short weighting (''short position'').[16] For each Index Commodity Contract represented by the Long/Short Index, Morningstar calculates a ''linked price''[17] that incorporates both price

[11] Markets in which a Fund may effect a transaction in certain Other Commodity Instruments may be in the OTC markets. The participants and dealers in such markets are typically not subject to the same level of credit evaluation and regulatory oversight as are members of the exchange-based markets. This exposes a Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a credit or liquidity problem or a dispute over the terms of the contract (whether or not bona fide), thus causing the Fund to suffer a loss. *See* note 10, *supra.*

[12] According to the Exchange, a long position is a position that will increase in market price if the price of the commodities comprising the Long/Flat Index, in the aggregate, are rising during the period when the position is open. A flat position is a position that will not increase in market price whether the price of the commodities comprising the Long/Flat Index, in the aggregate, is rising or falling.

[13] Morningstar, Inc. is the index provider (''Index Provider'' or ''Morningstar'') with respect to the Indexes. Morningstar is not registered as a broker-dealer. Morningstar Investment Services (''MIS''), a wholly-owned subsidiary of the Index Provider, is a broker-dealer and a registered investment adviser under the Investment Advisers Act of 1940. Morningstar has implemented procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Indexes and has implemented a ''fire wall'' with respect to its affiliated broker-dealer regarding the Indexes.

[14] A ''linking'' factor is defined for each commodity that converts the price of the contract in effect at each point in time to a value that accounts for contract rolls, *i.e.,* the ''linked price.'' Each time a contract is rolled, the ''linking'' factor is adjusted by the ratio of the closing price of the current contract to the closing price of the new contract.

[15] Roll yield is the amount of return generated (either positive or negative) by rolling a short-term contract into a longer-term contract and profiting or losing money from the convergence toward a higher or lower spot price. The linked price is determined on the basis of price changes and roll yields. Rolling a futures contract means closing out a position on near-dated (*i.e.,* commodity futures contracts that are nearing expiration) commodity futures contracts before they expire and establishing an equivalent position in a longer-dated futures contract (*i.e.,* commodity futures contracts that have an expiration date further in the future) on the same commodity. Futures contacts can be in ''backwardation,'' which means that futures contracts with longer-term expirations are priced lower than those with shorter-term expirations, or can exhibit ''contango,'' which means that futures contacts with longer-term expirations are priced higher than those with shorter-term expirations. In backwardation, market roll yields are positive. In contango, market roll yields are negative.

[16] A short position is a position that will increase in market price if the price of the Index Commodity Contracts comprising the Long/Short Index, in the aggregate, are falling during the period when the position is open. The Long/Short Index includes short positions in Index Commodity Contracts. The Long/Short ETF may also obtain a short position relative to certain Index Commodity Contracts by establishing a short position with a counterparty by investing in Other Instruments. According to the Long/Short Registration Statement, the Long/Short ETF will profit if the price of a short position in an Index Commodity Contract or Other Instrument that provides exposure to a short position in such Index Commodity Contract falls while the position is open, and the Long/Short ETF will suffer loss if the price of a short position in an Index Commodity Contract or Other Instrument that provides exposure to a short position in such Index Commodity Contract rises while the position is open. Because the value of the Index Commodity Contract or Other Instrument could rise an unlimited amount, a short position in an Index Commodity Contract or Other Instrument that provides exposure to a short position in such Index Commodity Contract theoretically will expose the Long/Short ETF to unlimited losses. In circumstances where a market has reached its maximum price limits imposed by the applicable exchange, the Long/Short ETF may be unable to offset its short position until the next trading day, when prices could expand again in rapid trading.

[17] *See* note 14, *supra.*

changes and roll yield.[18] Whether a position will be long or short (or cash, *i.e.,* flat in the case of energy futures contracts, as described below) is determined, at the time of a monthly repositioning, by comparing the linked price of each Index Commodity Contract to its 12-month moving average. For example, if, at a monthly repositioning, the linked price for an Index Commodity Contract exceeds its 12-month moving average, the Long/Short Index takes a long position in the subsequent month. Conversely, if the linked price for an Index Commodity Contract is below its 12-month moving average, the Long/Short Index takes a short position. An exception is made for commodities in the energy sector. If the signal for an Index Commodity Contract in the energy sector is short, the weight of that Index Commodity Contract is moved to cash (*i.e.,* flat). According to the Long/Short Registration Statement, energy is unique in that its price is extremely sensitive to geopolitical events and not necessarily driven purely by demand-supply imbalances.

To be considered for inclusion in the Long/Short Index, a commodity future must be listed on a U.S. futures exchange, be denominated in U.S. dollars and rank in the top 95% by total U.S. dollar value of the total open interest pool of all eligible commodities. The weight of each individual Index Commodity Contract is the product of two factors: magnitude and the direction of the momentum signal (*i.e.,* 1 for long, 0 for flat, or -1 for short). On the annual reconstitution date, the magnitude is the open interest weight of the Index Commodity Contract, calculated on the second Friday of December, using data through the last trading day of November. Individual contract weights are capped at 10%. Between reconstitution dates, the weights vary based on the performance of the individual Index Commodity Contract positions. The Long/Short Index is reconstituted annually and directions (*i.e.,* whether long, flat, or short) of each Index Commodity Contract are determined monthly on the second Friday of each month, which is one week prior to the monthly repositioning. As of February 28, 2013, the sector weightings of the Long/Short Index were Agriculture (29.40%), Energy (49.57%), Livestock (4.69%), and Metals (16.34%). The inception date of the Long/Short Index was December 21, 1979.

Composition of the Indexes

Information on the composition of the Indexes as of February 28, 2013, including the Index Commodity Contracts, percentage weightings and signals, as well as the Futures Exchanges on which the Index Commodity Contracts trade, is set forth in the Notice.[19]

With respect to each of the Indexes, the following are excluded:

(1) Financial futures contracts (*e.g.,* securities, currencies, interest rates, etc.).

(2) Commodity futures contracts not denominated in U.S. dollars.

(3) Commodity futures contracts with less than twelve months of pricing.

Morningstar sorts all commodity futures contracts that meet the above eligibility requirements in descending order by the total U.S. dollar value of open interest. All commodity futures contracts that make up the top 95% of the total open interest pool of all eligible commodity futures contracts, starting with the one with the largest open interest value, will be included in each of the Indexes.

The weight of each Index Commodity Contract in the Indexes is the product of two factors: magnitude and the direction of the momentum signal. Morningstar initially sets the magnitude based on the 12-month average of the dollar value of open interest of each Index Commodity Contract. Morningstar then caps the top magnitude at 10%, redistributing any overage to the magnitudes of the remaining Index Commodity Contracts. Morningstar chooses this capped open-interest weighting system in order to reflect the importance of each Index Commodity Contract in a global economy and to keep the Indexes diversified across commodities.

Each of the Indexes is reconstituted and rebalanced (*i.e.,* the Indexes' membership and constituent weights are reset) annually, on the third Friday of December after the day's closing values of the Indexes have been determined. The reconstitution is effective at the open of trading on first trading day after the third Friday of December.

Morningstar implements all futures contract rolls on the third Friday of each month to coincide with portfolio repositioning and the rolling of the U.S. Treasury bills used for collateral. If the third Friday of the month is a trading holiday, Morningstar rolls and rebalances or reconstitutes on the trading day prior to the third Friday. To ensure that contracts are rolled before becoming committed to receive physical delivery, contracts are selected so that the delivery month is at least two months away from the upcoming month. On each potential roll date, the delivery month of the current contract is compared to the delivery month of the nearest contract whose delivery month is at least two months away from the upcoming month. If the latter is further into the future than the former, the contract is rolled.

A more detailed description of the Funds and the Shares, the Indexes and the Index Commodity Contracts, as well as investment risks, creation and redemption procedures, NAV calculation, availability of values and other information regarding the Funds' holdings, and fees, among other things, is included in the Notice and the Registration Statements, as applicable.[20]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. According to

[18] *See* note 15, *supra.*

[19] *See* Notice, *supra* note 3, at 39814–5.

[20] *See supra* notes 3 and 5, respectively.

[21] 15 U.S.C. 78f.

[22] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

the Exchange, quotation and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Further, the prices of the Index Commodity Contracts, Other Instruments (except as described below) and Cash Instruments held by the Fund will be available from the applicable exchanges and market data vendors. The closing prices and settlement prices of Index Commodity Contracts or Other Commodity Contracts held by the Funds are readily available from the Web sites of the applicable Futures Exchanges, other futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Moreover, according to the Exchange, the relevant futures exchanges on which the Index Commodity Contracts or Other Commodity Contracts are listed also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the Index Commodity Contracts or Other Commodity Contracts are also available on such Web sites, as well as other financial informational sources. The prices of forward agreements, swaps, and other OTC transactions held by the Funds are not available from the exchanges, but will be available from major market data vendors and financial information service providers such as Reuters and Bloomberg and will be included in the calculation of the NAV and the intra-day indicative value (''IIV'') for the Shares.

Each Fund will disseminate its respective holdings on a daily basis on the Funds' Web site, which will include, as applicable, the names, quantity, price and market value of Index Commodity Contracts, Other Instruments (including forward contracts, OTC swaps, and other OTC transactions), and Cash Instruments. This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time.[25]

The intra-day level and the most recent end-of-day closing level of each Index will be published by the Exchange once every 15 seconds throughout the Exchange's Core Trading Session and as of the close of business for the Exchange, respectively. Any adjustments made to an Index will be published on Morningstar's Web site. The IIV [26] per Share of each Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.[27] The NAV per Share of each Fund will be calculated as of the closing time of NYSE Arca Core Trading Session or the last to close of the Futures Exchanges on which the Index Commodity Contracts or Other Commodity Contracts (which are listed on futures exchanges other than Futures Exchanges) are traded, whichever is later.[28] The NAV for each Fund will be disseminated to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and the corresponding NAV.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV, an Index value, or the value of the Index Commodity Contracts or Other Instruments occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may halt trading in the Shares if trading is not occurring in the Index Commodity Contracts or Other Instruments, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[29] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders [30] acting as registered Market Makers [31] in Trust Issued Receipts to facilitate surveillance.

[25] Disclosure regarding the components of each Index, the percentage weightings of the components of each Index and the long, short, or flat positions therein is available at *http://corporate.morningstar.com/US/asp/subject.aspx?page=2649&filter=Commodity&xmlfile=2738.xml.*

[26] The IIV will be based on the prior day's final NAV per Share, adjusted every 15 seconds during the NYSE Arca Core Trading Session to reflect the continuous price changes of a Fund's Index Commodity Contracts and other holdings. The Exchange represents that the normal trading hours for Index Commodity Contracts may begin after 9:30 a.m. and end before 4:00 p.m., Eastern Time, and that there will be a gap in time at the beginning and the end of each day during which the Funds' Shares will be traded on the Exchange, but real-time trading prices for at least some of the Index Commodity Contracts held by the Funds are not available. As a result, during those gaps the IIVs of the Funds will be updated but will reflect the closing prices for such Index Commodity Contracts that have stopped trading before the NAV is calculated.

[27] According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

[28] All open commodity futures contracts traded on a U.S. or non-U.S. exchange will be calculated at their then current market value, which will be based upon the settlement price for that particular commodity futures contract traded on the applicable U.S. or non-U.S. exchange on the date with respect to which NAV is being determined; provided, that if a commodity futures contract traded on a U.S. or on a non-U.S. exchange could not be liquidated on such day, due to the operation of daily limits (if applicable) or other rules of the exchange upon which that position is traded or otherwise, the settlement price on the most recent day on which the position could have been liquidated will be the basis for determining the market value of such position for such day. The value of Cleared Swaps will be determined based on the value of the Index Commodity Contract in connection with each specific Cleared Swap. In calculating the NAV of a Fund, the settlement value of a Cleared Swap (if any) and an OTC Other Commodity Instrument (if any) will be determined by either applying the then-current disseminated value for the related Index Commodity Contracts or the terms as provided under the applicable Cleared Swap or OTC Other Commodity Instrument, as applicable. However, in the event that one or more of the related Index Commodity Contracts are not trading due to the operation of daily limits or otherwise, the Managing Owner may in its sole discretion choose to value the applicable Fund's Cleared Swaps or OTC Other Commodity Instruments (if any) on a fair value basis in order to calculate such Fund's NAV. These fair value prices would be generally determined based on available inputs about the current value of the Index Commodity Contract to which the Cleared Swap or OTC Other Commodity Instrument relates and would be based on principles that the Managing Owner deems fair and equitable so long as such principles are consistent with normal industry standards. Exchange-traded Other Commodity Instruments will be valued at their market prices on the exchanges on which such instruments trade.

[29] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[30] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[31] *See* NYSE Arca Equities Rule 1.1(v) (defining Market Maker).

The Commission notes that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[32] will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'') and FINRA may obtain trading information regarding trading in the Shares, futures contracts, and exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, futures contracts, and exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[33] The Managing Owner is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer, and has policies and procedures in place regarding access to information concerning the composition and/or changes to the Funds' portfolio composition. The Index provider is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Indexes and has implemented a ''fire wall'' with respect to its affiliated broker-dealer regarding the Indexes.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) Each Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated, as well as during the Core Trading Session where the IIV may be based in part on static underlying values; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) With respect to application of Rule 10A–3 under the Act,[34] the Funds rely on the exception contained in Rule 10A–3(c)(7).[35]

(6) Each Fund intends to invest first in Index Commodity Contracts. Thereafter, if a Fund reaches the position limits applicable to one or more Index Commodity Contracts or a Futures Exchange imposes limitations on the Fund's ability to maintain or increase its positions in an Index Commodity Contract after reaching accountability levels or a price limit is in effect on an Index Commodity Contract during the last 30 minutes of its regular trading session, each Fund's intention is to invest first in Cleared Swaps to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Other Commodity Contracts or in Other Commodity Instruments. Each Fund's investments will be consistent with such Fund's investment objective and will not be used to enhance leverage.

(7) With respect to the Funds' assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(8) The Managing Owner will attempt to minimize market and credit risks by requiring the Funds to abide by various trading limitations and policies, which will include limiting margin accounts and trading only in liquid markets. The Managing Owner will implement procedures which will include, but will not be limited to: executing and clearing trades with creditworthy counterparties; limiting the amount of margin or premium required for any Index Commodity Contract or Other Commodity Contract or all Index Commodity Contracts or Other Commodity Contracts combined; and generally limiting transactions to Index Commodity Contracts or Other Commodity Contracts which will be traded in sufficient volume to permit the taking and liquidating of positions.

(9) The Funds will enter into Other Commodity Instruments traded OTC (if any) with counterparties selected by the Managing Owner. The Managing Owner will select such Other Commodity Instrument counterparties giving due consideration to such factors as it deems appropriate, including, without limitation, creditworthiness, familiarity with the applicable Index, and price. Under no circumstances will the Funds enter into an OTC Other Commodity Instrument with any counterparty whose credit rating is lower than investment-grade at the time a contract is entered into. The Funds expect that investments in OTC Other Commodity Instruments (if any) will be made on terms that are standard in the market for such OTC Other Commodity Instruments. In connection with such OTC Other Commodity Instruments, the Funds may post or receive collateral in the form of Cash Instruments, which will be marked to market daily.

(10) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in the Notice.[36]

[32] The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[33] The Exchange states that CME Group, Inc., (which includes CME, CBOT, and NYMEX), and ICE–US are members of ISG. In addition, the Exchange states that it has entered into a comprehensive surveillance sharing agreement with ICE–UK that applies with respect to trading in Index Commodity Contracts.

[34] 17 CFR 240.10A–3.

[35] 17 CFR 240.10A–3(c)(7).

[36] The Commission notes that it does not regulate the market for U.S.-traded futures in which the Funds plans to take positions, which is the responsibility of the CFTC. The CFTC has the

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [37] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–NYSEArca–2013–60) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20336 Filed 8–20–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70212; File No. SR–NYSEMKT–2013–69]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for Display Use of the NYSE MKT BBO and NYSE MKT Trades Market Data Products and Making Certain Technical Changes to the Fee Schedule

August 15, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 1, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for display use of the NYSE MKT BBO and NYSE MKT Trades market data products and make certain technical changes to the fee schedule. The changes will be operative on August 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for display use of the NYSE MKT BBO [4] and NYSE MKT Trades [5] market data products and make certain technical changes to the fee schedule. The changes will be operative on August 1, 2013.

The Exchange currently charges $10 per month for professional users and $5 per month for non-professional users for display use of NYSE MKT BBO.[6] Alternatively, the Exchange charges $0.005 per quote for display use of NYSE MKT BBO for non-professional users, capped at $5 per month per non-professional user.[7] The Exchange currently charges $10 per month for professional users for display use of NYSE MKT Trades. The Exchange currently does not offer NYSE MKT Trades for non-professional users under a per-user fee structure.[8]

The Exchange also charges an access fee of $750 per month for NYSE MKT BBO and an access fee of $750 for NYSE MKT Trades. However, a single access fee applies for clients receiving both NYSE MKT BBO and NYSE MKT Trades.

Vendors that redistribute NYSE MKT Trades data pay a redistribution fee of $750 per month.

The Exchange proposes to lower the professional user fees for display use of NYSE MKT BBO from $10 per month to $1 per month, lower the non-professional user fees for display use of NYSE MKT BBO from $5 per month to $0.05 per month, and eliminate the per quote option for display use of NYSE MKT BBO for non-professional users. The Exchange also proposes to lower the professional user fee for display use of NYSE MKT Trades from $10 per month to $1 per month and introduce a fee for display use of NYSE MKT Trades by non-professional users of $0.05 per month.

The Exchange also proposes to establish a $20,000 per month enterprise fee for an unlimited number of professional and non-professional users for NYSE MKT BBO and a $20,000 per month enterprise fee for an unlimited number of professional and non-professional users for NYSE MKT Trades. A single enterprise fee will apply for vendors receiving both NYSE MKT BBO and NYSE MKT Trades.

As an example, under the current fee structure, if a firm had 1,500 professional users who each received

authority to set limits on the positions that any person may take in such futures. These limits may be directly set by the CFTC or by the markets on which such futures are traded. The Commission has no role in establishing position limits on such futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE MKT BBO is an NYSE MKT-only market data feed that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that the Exchange reports under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. The data feed includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE MKT reports quotes under the CQ Plan.

[5] NYSE MKT Trades is an NYSE MKT-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams and certain other related data elements. Specifically, NYSE MKT Trades includes the real-time last sale price, time, size, and bid-ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE MKT's opening price, high price, low price, closing price, and cumulative volume for the security.

[6] The Exchange applies the same criteria for qualification as a ''non-professional subscriber'' as the CTA and CQ Plan participants use. *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500, 31502 (June 3, 2010) (SR–NYSEAmex–2010–35).

[7] *Id.* The cap is referenced in this filing, although it does not currently appear in the fee schedule.

[8] *See* SR–NYSEAmex–2010–35, *supra* n.6. When NYSE MKT Trades was initially offered, the Exchange had not observed a demand for non-professional use because an alternative product was available. *See id.* The Exchange now offers two last sale market data products for distribution to non-professional users, NYSE MKT Trades Digital Media and NYSE MKT Realtime Reference Prices Digital Media. *See* Securities Exchange Act Release No. 69300 (Apr. 4, 2013), 78 FR 21469 (Apr. 10, 2013) (SR–NYSEMKT–2013–31).